IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2710 OF 2004.

Sushil Sain. ... Petitioner.

V/s.

State of Maharashtra & Ors. ... Respondents.

Ms.M. Adenwalla, Advocate for petitioner.

Mr.D.P.Adsule, APP for State.

Mr.Boni Patel i/b. M/s.Mulla & Mulla & CBC for Respondents.

CORAM : V.M.KANADE,J
DATE : MARCH 24, 2005.

P.C. :

1. Heard the learned counsel for the petitioner and respondents and the learned APP for the State.

2. Petitioner is challenging issuance of process by the Metropolitan Magistrate on complaint being filed by the respondent under section 138 of N.I.Act.

3. It is submitted by the learned counsel for petitioner that the petitioner resigned as a Director of the company on 25/2/1997. The petitioner has relied on the certified copy of the Form-32. It is submitted that the name of the petitioner had not appeared in the Annual Returns after 1998. The

petitioner has also produced other documents to show that the petitioner no longer was Director of the company after he had resigned.

4. The learned counsel appearing for respondents has filed reply and in his reply, he has given detailed reason stating therein that at the relevant time when the complaint was filed, the complainant did not have any material to verify whether the statement made by the petitioner in the reply to the statutory notice was correct or not and in view of the period of limitation, they had no other option, but to file complaint against the company and its director.

5. I have perused various documents filed by the petitioner. It is very clear from these documents that before issuance of cheques, the petitioner no longer was Director of the company and at the relevant period, he was neither in-charge nor responsible for the day to day affairs of the company. The submission made by the learned counsel for the applicant will have to be accepted. The name of the petitioner should be deleted from the complaint. The process issued against him is hereby quashed.

6. So far as the claim of the petitioner for

compensation of Rs.1,26,850/- is concerned, in my view, this prayer cannot be accepted. The complaint was filed by the respondent under section 138 of N.I.Act. From the averments made in the affidavit in reply, it can be seen that the respondent was under the bonafide impression that the petitioner was Director at the relevant time and he had no material to verify whether the assertion made by the petitioner in his reply to the statutory notice is correct or not. In view of this explanation, in my view, conduct of the complainant was bonafide in including name of the petitioner in the list of accused persons. The claim for compensation is therefore, rejected. Petition is however, allowed in the above terms.

(V.M.KANADE,J)